

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Apr 8 1993 Washington, D.C. 20554

FCC 93-145

In the Matter of )  
 )  
Implementation of Section 8 of )  
the Cable Television Consumer )  
Protection and Competition Act )  
of 1992 )  
 )  
Consumer Protection and Customer )  
Service )

MM Docket No. 92-263

REPORT & ORDER

Adopted: March 11, 1993

Released: April 7, 1993

By the Commission: Commissioner Marshall not participating.

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## I. Introduction

1. By this Report & Order, the Commission implements Section 632 of the Communications Act of 1934 (47 U.S.C. Sec. 632) ("Communications Act"), as amended by Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992" or "1992 Act").<sup>1</sup> That provision governs the establishment, implementation and enforcement of customer service standards for cable operators nationwide. In the Notice of Proposed Rule Making in this proceeding, the Commission solicited public comment on issues concerning the implementation of Section 8 of the Cable Act of 1992. See Notice of Proposed Rule Making in MM Docket No. 92-263, 7 FCC Rcd 8641 (1992) ("Notice"). A list of those parties commenting in this proceeding is attached hereto as "Appendix A."

2. Section 632 of the Communications Act, as amended by Section 8 of the Cable Act of 1992, provides:

- (a) FRANCHISING AUTHORITY ENFORCEMENT.- A franchising authority may establish and enforce-
  - (1) customer service requirements of the cable operator, and
  - (2) construction schedules and other construction-related requirements, including construction-related performance requirements, of the cable operator.
- (b) COMMISSION STANDARDS.- The Commission shall, within 180 days of enactment of the Cable [Act of 1992], establish standards by which cable operators may fulfill their customer service requirements. Such standards shall include, at a minimum, requirements governing-
  - (1) cable system office hours and telephone availability;
  - (2) installations, outages, and service calls; and
  - (3) communications between the cable operator and the subscriber (including standards governing bills and refunds).

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<sup>1</sup> Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, Section 8, 106 Stat. 1460 (1992).

(c) CONSUMER PROTECTION LAWS AND CUSTOMER SERVICE AGREEMENTS.-

(1) CONSUMER PROTECTION LAWS.- Nothing in this title shall be construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this title.

(2) CUSTOMER SERVICE REQUIREMENT AGREEMENTS.- Nothing in this section shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission under subsection (b). Nothing in this title shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section.

3. As set forth in detail below, we will establish customer service standards in the areas delineated by Section 632(b)(1)-(3) of the Communications Act, as amended by Section 8 of the Cable Act of 1992. These standards will become effective on a nationwide basis on July 1, 1993. They will then be enforced by local franchising authorities, which will be required to provide cable operators with 90-days written notice of their intent to so enforce. Franchise authorities may agree with cable operators to adopt stricter standards and may enact any state or municipal law or regulation which imposes stricter or additional customer service standards to those set by this Commission. Moreover, the Commission's customer service standards do not necessarily supersede existing customer service requirements in current franchise agreements. Since local authorities will be enforcing customer service requirements, this Commission will have a limited role in enforcement matters.

II. Establishment and Implementation of  
Customer Service Standards

A. Background

4. We first address the establishment of Federal customer service standards, the process by which customer service standards become service requirements applicable to franchised cable television system operators, and the enforcement of those service obligations. We conclude that the resolution of these issues should be guided by the key objective of Section 8 of the

1992 Act; that is, to ensure that cable operators nationwide provide satisfactory service to their customers. In this regard, both the Senate and House Committee Reports recognize that although franchise authorities may presently establish customer service standards in franchise agreements, some cable operators have nevertheless provided inconsistent and unsatisfactory levels of customer service.<sup>2</sup> The Cable Act of 1992 is intended, in part, to address these concerns by requiring the Commission to establish standards by which cable operators may fulfill their customer service obligations (47 U.S.C. Sec. 632(b)), and by enhancing the ability of local franchise authorities to enforce mandatory levels of customer service (47 U.S.C. Sec. 632(a)).

5. In general, comments on the establishment, implementation and enforcement of customer service standards were largely divided between local governments and municipalities (and representative organizations), on the one hand, and cable operators (and representative industry associations) on the other. For their part, local government interests generally favor self-executing Federal standards immediately applicable to cable system operators. By contrast, cable interests typically contend that franchise authorities must take affirmative action, consistent with and limited by existing franchise agreements, to impose and enforce customer service requirements. Most commenting parties saw little, if any, active enforcement role for this Commission beyond establishing Federal standards for customer service. Because the interplay among the separate provisions of Section 632 of the Communications Act, as amended by the Cable Act of 1992, defines the scope of adoption and enforcement of customer service standards, those provisions are addressed both individually and collectively below.

#### B. Adoption of Customer Service Standards

6. In the Notice, we tentatively concluded that the Cable Act of 1992 requires this Commission only to establish customer service standards that may be adopted by State and local governments. We asked interested parties to comment on this premise, on how Congress intended the customer service standard-setting process to function, and on the specific mechanism(s) whereby customer "service standards" become "service requirements" for local cable system operators.<sup>3</sup> We also solicited comment on whether customer service standards

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<sup>2</sup> See Senate Comm. on Commerce, Science and Transportation, S. Rep. No. 102-92, 102d Cong., 2d Sess. at 20 (1992) ("Senate Report"); House Comm. on Energy and Commerce, H.R. Rep. No. 102-628, 102d Cong., 2d Sess. at 34-35, 105 (1992) ("House Report").

<sup>3</sup> Notice, 7 FCC Rcd at 8642-43, paras. 4-7.

promulgated by the Commission were in any sense self-executing or, if not, what actions must be taken by a local franchise authority to impose and enforce service requirements on cable operators.

7. The National Association of Telecommunications Officers and Advisors, et al. ("NATOA"), filing on behalf of "local governments," maintains that the Commission-established service standards should be self-executing and applicable to all cable systems as of the date of adoption by the FCC without any further action required to be taken by franchise authorities.<sup>4</sup> It contends that the Federal customer service standards should apply to all cable operators unless: (1) a franchise authority decides to waive one or more of the FCC's standards in favor of less stringent requirements;<sup>5</sup> (2) the existing franchise agreement already includes more stringent customer service standards (less stringent standards already in place would be superseded by the Federal standards);<sup>6</sup> or (3) a franchise authority promulgates more stringent or different standards pursuant to State or municipal consumer protection laws.

8. In contrast, most owners and operators of cable television systems, as well as the National Cable Television Association ("NCTA") and the Community Antenna Television Association, Inc. ("CATA"), two trade associations representing cable owners and operators, contend that there is nothing in the

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<sup>4</sup> NATOA comments at 2. NATOA suggests that if franchise authorities were required to take affirmative action to adopt the Commission-established standards, "they would undoubtedly face a barrage of piecemeal cable industry challenges, on a jurisdiction-by-jurisdiction basis. . . [which] would only delay the protection Congress intended to provide to cable consumers, undermine the Congressional goals of requiring national customer service standards, and unnecessarily waste local resources." Id. at 10.

<sup>5</sup> In such a case, NATOA would have the franchise authority provide a succinct, written notice of its action to the Commission which, after seeking further comment, could override the decision. Id. at 14. The Municipal Franchising Authorities ("MFA"), at page 6 of its comments, suggest that only franchise authorities should be permitted to seek waivers of the FCC-established standards. However, Metropolitan Dade County ("Dade County") disagrees that franchise authorities should have the authority to waive the Federal standards in favor of less stringent standards. It believes that franchise authorities will be unduly pressured by cable operators to lower standards or face piecemeal challenges. Dade County reply comments at 3.

<sup>6</sup> See, e.g., MFA comments at 9-10; Attorneys General of Pennsylvania, Massachusetts, New York, Ohio and Texas ("Attorneys General") comments at 5 (existing service requirements should be preempted only to the extent that they fall below the Federal standards). These parties maintain that there is no authority in the Cable Act of 1992 to grandfather less strict standards than those established by the FCC. But see City of Dallas ("Dallas") comments at 2-3 (all current customer service requirements contained in existing franchise agreements should be grandfathered to preserve mutually acceptable agreements already in place).

<sup>7</sup> NATOA comments at 2-5.

Cable Act or its legislative history to suggest that the customer service standards to be established by this Commission are in any way self-executing or will govern cable operators in the absence of some affirmative action by franchise authorities to adopt them (i.e., there is no Federal standard "by default").<sup>8</sup> In essence, these parties interpret Section 632, as amended by the Cable Act of 1992, as providing three alternatives for the imposition of customer service standards: (1) local adoption of the FCC-established standards;<sup>9</sup> (2) the setting of different (greater or lesser) service standards by mutual agreement between the franchise authority and the cable operator;<sup>10</sup> or (3) the enactment of State or municipal consumer protection laws, ordinances or regulations of "general applicability" (i.e., not cable-industry specific).<sup>11</sup> These commenters generally maintain

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<sup>8</sup> NCTA comments at 20. Continental Cablevision, Inc. ("Continental") believes that the FCC's standards should not be "codified" in the Commission's rules, highlighting the discretionary nature of franchise authorities' decision to adopt them. Continental comments at 45, n.27. Additionally, NCTA suggests that self-executing Federal standards would penalize those operators that have already devoted extensive resources to achieve high levels of customer satisfaction under existing franchise agreements. NCTA reply comments at 9.

<sup>9</sup> Time Warner Entertainment Company, L.P. ("Time Warner") and Comcast Corporation et al. ("Comcast") maintain that Section 632(a) of the Communications Act is an enabling provision allowing franchise authorities to adopt the FCC-established standards if the existing franchise agreement would otherwise preclude such action. They further assert that franchise authority adoption of the Federal standards is discretionary, not mandatory. Time Warner comments at 9-10; Comcast comments at 5-6. However, these commenters also maintain that this authority is limited to adoption of the Federal standards, and does not permit the amendment of existing franchise agreements to impose standards that exceed those established by the FCC or to confer additional enforcement powers other than those already in place in existing agreements. See paragraph 17, infra.

<sup>10</sup> Time Warner and other commenters interpret Section 632(b) as permitting a cable operator to fulfill customer service responsibilities by complying with the FCC-established standards, effectively requiring mutual consent between a cable operator and franchise authority for deviations therefrom. See Time Warner reply comments at 6. Local governments, on the other hand, do not view the FCC standards to be established under Section 632(b) as the exclusive mechanism to satisfy customer service obligations; NATOA suggests that the Federal standards "may" be one way to fulfill customer service requirements, but only if the franchise authority does not require more. NATOA reply comments at 7-9.

<sup>11</sup> These commenters believe the last clause of Section 632(c) (2) must be directed to laws of general applicability because, they allege, any other interpretation would have the effect of allowing unilateral imposition of higher standards on cable operators, a result not otherwise provided for in the statute. See, e.g., NCTA comments at 20; CATA comments at 5-7. They additionally maintain that if franchising authorities could unilaterally impose higher standards, the statutory provision for cable operator consent for the imposition of standards exceeding the Federal model would be negated. See, e.g., Continental comments at 48-50. Local governments, on the other hand, generally argue that neither the language of Section 632 nor its legislative history indicates a Congressional intent to limit State or local consumer protection laws to those of general applicability. See, e.g., NATOA reply comments at 9, n.5.

that existing customer service requirements in current franchise agreements should be grandfathered.<sup>12</sup> Most of these commenters also assert that franchising authorities must put cable operators on notice of the imposition of any customer service standards, and Comcast Corporation et al. ("Comcast") maintains that cable operators must be given notice and an opportunity to oppose adoption of the Federal standards where, due to the characteristics of an individual system and its marketplace, implementation of those standards would adversely affect the operations of the system or require an increase in rates.<sup>13</sup>

9. Viacom International Inc. et al. ("Viacom"), which suggests that the Federal customer service standards be imposed on all video programming distributors, advances the following three-phase implementation approach: (1) immediate adoption by the FCC of self-executing basic national standards (a national "floor") to guarantee service quality in communities without formal standards while more comprehensive national standards are developed; (2) more comprehensive standards (based on existing NCTA voluntary guidelines) adopted by the FCC, which local authorities would be free to adopt, to become effective one year after adoption; and (3) negotiation of standards that exceed the FCC standard at the franchise renewal or at "interim negotiation sessions."<sup>14</sup>

10. Discussion. As the record in this proceeding reveals, the language of Section 632 of the Communications Act, as amended by Section 8 of the 1992 Cable Act, does not clearly dictate the

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<sup>12</sup> See, e.g., Cole, Raywid & Braverman ("CRB") comments at 3; NCTA comments at 25-27. Comcast maintains that franchise authority enforcement power is limited to those mechanisms contained in existing franchise agreements and any changes implemented in the context of a franchise renewal. Comcast comments at 11-12.

<sup>13</sup> Comcast comments at 3. Comcast also maintains that franchising authorities should be required to demonstrate the need for standards that exceed the FCC-established standards, and should show that this need outweighs the associated costs. Comcast would also allow cable operators to file petitions for special relief with the Commission demonstrating that adherence to excessive customer service standards is inconsistent with the objective of reasonable rates. Id. at 8-11. In response, local governments maintain that lengthy implementation processes are contrary to the intent of Congress to provide immediate relief for substandard customer service. See, e.g., NATOA reply comments at 6.

<sup>14</sup> Viacom comments at 2-5. In its reply comments, Viacom emphasizes that, unless a cable operator and franchise authority mutually agree to customer service requirements that exceed the Federal standards, any such standards should be justified to or approved by this Commission. Viacom reply comments at 2. In those situations in which a renegotiation is not scheduled to occur within a reasonable time frame, Viacom suggests that more stringent customer service standards should be addressed in waiver requests to the FCC. If the Commission determines that more stringent service standards should be imposed without negotiations, it requests that cable operators be permitted to pass the added costs of compliance through to subscribers without local rate approval. Id. at 6.

precise mechanism by which customer service requirements are to be adopted. However, we believe that the implementation scheme most consonant with the language of the statute and Congress' intent is for this Commission to establish self-executing standards which set forth the customer service obligations of cable operators nationwide. Section 632(b) provides that the Commission "shall . . . establish standards by which cable operators may fulfill their customer service requirements" (emphasis added). Although Section 632(a) states that a local franchise authority also "may establish and enforce" customer service requirements, we believe that this provision should be read in conjunction with Section 632(c), which expressly permits local governments to adopt standards exceeding those established by the Commission either with the consent of the cable operator or by enactment of an appropriate law or regulation. Thus, reading all three provisions together, we conclude that the Commission is required to establish baseline customer service standards on which local governments may rely to ensure that the cable systems they regulate provide an adequate level of customer service to cable subscribers. At the same time, Sections 632(a) and (c) preserve the ability of local governments to exceed the FCC standards through the franchising or regulatory process when additional obligations are deemed necessary.<sup>15</sup> Accordingly, we agree with NATOA, most local governments and other commenters that the customer service standards we establish today should be self-executing.

11. We recognize the concerns of some commenters regarding the difficulty of promulgating uniform national standards that will govern the customer service obligations of cable systems nationwide. We particularly acknowledge our concern regarding smaller cable systems that have limited subscriber bases, since the costs of imposing the FCC-established standards on these systems may have a significant impact on rates. As discussed in Section III(B) below, however, we believe that we have developed customer service standards that are both reasonable and sufficiently flexible to accommodate the range of cable operations to which they will be applied. With respect to the issue of adopting a flat exemption for small cable systems, we observe that there is little consensus among the commenting

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<sup>15</sup> The legislative history supports this interpretation. The customer service provision adopted by Congress is virtually identical to the provision in H.R. 4850. The House Committee Report on that bill states that the Commission shall promulgate "minimum Federal standards for customer service and consumer protection." House Report at 37. See also Statement of Chairman John Dingell, 138 Cong. Rec. H6500 (daily ed. July 23, 1992) (statute "requires the FCC to come up with tough customer service standards -- and provides for effective enforcement"); Statement of Chairman Edward Markey, 138 Cong. Rec. E1034 (daily ed. April 10, 1992) (draft legislation would "require the FCC to establish universal customer service standards").



parties as to whether such an exemption is needed<sup>16</sup> and, if so, how it should be designed.<sup>17</sup> To the extent that the flexibility in our standards may not accommodate some small systems without an undue adverse impact to subscribers, we believe that the better approach is to encourage small systems to seek waivers of our standards should they conclude that one or more of those standards is too onerous.<sup>18</sup> In this regard, we will consider small systems to be those with 1,000 or fewer subscribers, since it is these cable systems that we previously have recognized face special difficulties in meeting Federal regulatory requirements.<sup>19</sup>

12. Should local governments wish to exceed the customer service standards we adopt today, they may do so through the franchising process or otherwise with the consent of the cable

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<sup>16</sup> Commenting parties ranged from no blanket exemptions based on numbers of subscribers (See, e.g., the City of St. Louis reply comments at 18) to total or partial service exemptions for systems under 15,000 subscribers (Viacom comments at 9-11); those under 10,000 (NCTA comments at 32-33); those under 1,000 (Coalition comments at 2-3); or those with gross revenues below 7.5 million dollars (Consortium comments at 2-4). In addition, some commenters would permit waiver or exemption from service requirements only for wholly owned, stand-alone systems. See, e.g., NATOA comments at 16-17. But see CATA reply comments at 3-4 (distinctions between stand-alone and multiple operator systems inappropriate because service requirements must make financial sense on community-by-community basis).

<sup>17</sup> Commenting parties range in their suggestions from the FCC acting on waiver requests made by franchise authorities (MFA comments at 13-14) or system operators (NCTA reply comments at 10), to franchising authorities implementing their own small system standards (New York State Commission on Cable Television ("NYSCCT") comments at 11-12), to exemptions by mutual agreement of the franchise authority and the cable operator (National Telephone Cooperative Association comments at 4-5). In addition, NCTA requests that the Commission recognize that smaller systems may be less able to comply with all of the Federal standards, and urge franchising authorities to take that into account when developing and applying customer service standards. NCTA comments at 32-33.

<sup>18</sup> When submitting such waiver requests, small cable operators should attach the views of the local franchising authority on the request and provide a detailed explanation as to the costs of compliance for each of the specific Federal standards for which a waiver is sought. In granting waiver requests, our preference clearly will be to approve an alternate standard rather than waive a standard altogether. Therefore, the system seeking a waiver of our standards should propose any alternative standard(s) with which it could comply in the event the request is favorably considered. The alternative standard(s) proposed should be crafted to best meet, under the circumstances, the statutory objectives and should track, as best as possible, the FCC-established standards. In addition, the waiver request should, where possible, include a projected date when full compliance with the FCC standard can be achieved.

<sup>19</sup> See, e.g., Cable Television Technical and Operational Requirements, 7 FCC Rcd 2021, 2033-34, recon. granted on other grounds, 7 FCC Rcd 8676 (1992).

operator, or they may enact an appropriate law or regulation.<sup>20</sup> In this latter regard, we find that Section 632(c) of the Communications Act does not prevent the enactment and enforcement of any State or municipal law or regulation concerning consumer protection or customer service which imposes service requirements that exceed, or involve matters not addressed by, the Federal standards. We note that a number of commenters assert that any such laws must be generally applicable to businesses in the community -- *i.e.*, they cannot be "cable specific."<sup>21</sup> In support of this interpretation, these parties claim that Congress did not intend for local governments to be able to "unilaterally" impose stricter standards on cable operators. We disagree. There is nothing in the statutory language or legislative history which suggests that Congress meant to limit consumer protection or customer service laws in this manner. Moreover, franchise authorities will not be able to enact consumer protection or customer service laws or regulations without following the procedural requirements attendant to the political process. Cable operators will thus have ample opportunity to present their views and all relevant information to the local government and the public before any such State or municipal regulation is passed.

#### C. Enforcement of Customer Service Standards

13. In the Notice, we tentatively concluded that, following the historical pattern that customer service standards have not been imposed or enforced at the Federal level, the Cable Act of 1992 provides the Commission with no role in the enforcement of its own or any other customer service standards.<sup>22</sup> Interested parties were asked to comment on whether the Commission should have any role with regard to customer service once it establishes the Federal standards.<sup>23</sup>

14. Most commenters believe that Section 632 does not provide a direct or active role for the FCC in the enforcement of customer service obligations. Local governments generally suggest that local enforcement by franchise authorities is the

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<sup>20</sup> Because there is no indication that Congress intended for more stringent requirements already included in existing franchise agreements to be relaxed as a result of our actions today, such pre-existing franchise terms will be grandfathered through the end of the franchise term.

<sup>21</sup> See note 11, supra.

<sup>22</sup> 7 FCC Rcd at 8642, para. 4.

<sup>23</sup> Id. at 8643, para. 7.

only logical and appropriate course;<sup>24</sup> cable interests generally take the position that since local authorities must adopt standards, they must enforce them consistent with existing franchise agreements. Virtually all commenters maintain that local enforcement offers the flexibility necessary to properly meet individual community needs.

15. NATOA views local authorities and this Commission as sharing the responsibility of implementing customer service standards. It suggests that franchising authorities would shoulder the administrative burdens of enforcement, including setting time-frames for and overseeing local compliance,<sup>25</sup> establishing appropriate methods to measure cable operator compliance,<sup>26</sup> reviewing individual subscriber complaints, establishing penalties for violations,<sup>27</sup> and imposing specific billing and collection procedures.<sup>28</sup> It states that franchise authorities would be primarily responsible for enforcing the standards and would submit written reports of their enforcement actions to the FCC, which could act as a final arbiter of disputes.<sup>29</sup> In response, Continental believes that NATOA's approach would create difficult and unnecessary administrative burdens on the FCC, requiring increased staff and resources in an area where Congress has given the FCC no enforcement authority.<sup>30</sup>

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<sup>24</sup> Dallas suggests that if the Federal standards preempt prospective or existing locally established standards, then the FCC should accept and resolve all complaints. Dallas comments at 3-4.

<sup>25</sup> NATOA comments at 10-13.

<sup>26</sup> See also Northwest Municipal Cable Council ("Northwest") comments at 4. Some commenters suggest that franchise authorities should be free to establish appropriate record-keeping requirements for cable operators in order to assess compliance. Id. See also, e.g., City of Miami Beach ("Miami Beach") comments at 8; Fairfax County reply comments at 10 (cable operators should submit to the FCC an annual report summarizing compliance).

<sup>27</sup> See also, Miami Beach comments at 6-8. However, Continental suggests that no authority is statutorily conferred on franchise authorities to assess penalties and fines. Continental comments at 47, n.31. In response, NATOA claims that while cable operators generally agree that local authorities are the appropriate entities to enforce customer service standards, by linking implementation of enforcement processes to the franchise process, franchise authorities would not be provided meaningful mechanisms to ensure such enforcement. NATOA reply comments at 10-13.

<sup>28</sup> NATOA comments at 14, 25-27.

<sup>29</sup> Id. at 2, 10-14. NATOA would have the FCC retain appellate-like jurisdiction to review local enforcement actions involving the Federal standards. In addition, it would preclude cable operators from having direct recourse to the FCC. It would require that, prior to Commission review of a particular complaint of a cable operator or subscriber, a franchise authority first certify that the complaint or issue meets jurisdictional tests for FCC review. See note 32 infra.

<sup>30</sup> Continental reply comments at 8-9. See also CATA reply comments at 6.

16. Other commenters advocating some enforcement role for the FCC would limit that role to reviewing and, if necessary, adjusting the Federal standards it adopts.<sup>31</sup> As previously noted, Comcast maintains that special relief petitions should be available to cable operators who can demonstrate that adherence to excessive standards is inconsistent with the Cable Act objectives of reasonable rates. Similarly, Continental suggests that while there is no formal role for the FCC, it may interpret the Federal standards, if questions arise, through special relief petitions or requests for declaratory rulings.<sup>32</sup> Viacom suggests that conflicts in standards among various franchise authorities covering geographically close or multiple franchise areas should be resolved at the FCC or by the affected cable operator(s). It also maintains that the FCC should establish a complaint process when there is no franchise authority with enforcement jurisdiction.<sup>33</sup>

17. Most cable interests maintain that customer service standards imposed on cable operators should be directed at ensuring adequate levels of customer service on an aggregate performance, system-wide basis. These commenters oppose any individual complaint resolution process, maintaining that enforcement mechanisms that focus on individual complaints would result in significant administrative burdens and costs in the pursuit of an unattainable and illusory goal of customer service perfection.<sup>34</sup> Time Warner believes that franchise authorities should be limited to enforcing customer service standards pursuant to enforcement procedures that already exist in franchise agreements, those procedures mutually agreed upon by the franchise authority and the cable operator, or pursuant to existing renewal provisions, contained in Section 546(c)(1)(B) of the Communications Act (47 U.S.C. Sec. 546(c)(1)(B)), which permit franchise authorities to consider the quality of an

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<sup>31</sup> The Chief Counsel for Advocacy, U.S. Small Business Administration ("USSBA"), in its comments at 3, n.3, suggests that the FCC issue a Notice of Inquiry after it establishes the Federal standards to determine whether the standards need modifications or additions.

<sup>32</sup> Comcast comments at 10. See also Continental comments at 47. On the other hand, NATOA suggests that in order for a cable operator or customer to obtain recourse to the FCC, a franchise authority must first certify that the complaint or question is appropriate for Commission review because it implicates national policy considerations or involves a systemic and continuous pattern of conduct that can not otherwise be resolved at the local level. NATOA comments at 9-14. See also Fairfax County reply comments at 8-9.

<sup>33</sup> Viacom comments at 14-15. Viacom would also have the FCC establish a complaint process to deal with standards that it believes should be made applicable to all video program distributors, regardless of whether such operators are subject to the jurisdiction of local franchise authorities.

<sup>34</sup> TCI comments at 20-21; Time Warner comments at 14-15; NCTA comments at 19.

operator's service,<sup>35</sup> including complaint responsiveness and billing practices. While some commenters suggest that no authority is statutorily conferred on franchise authorities to assess penalties and fines,<sup>36</sup> others request that the FCC limit penalties to actual subscriber losses and prohibit punitive damages and continuing violations assessments.<sup>37</sup> These commenters also suggest that the FCC should limit a franchise authority's penalty powers to those instances where the cable operator has been given an opportunity to correct a deficiency. TCI maintains that the FCC should establish "enforcement principles" to which franchising authorities must adhere, including measurement (and reasonable penalties) based on aggregate performance, due process and an opportunity to cure.<sup>38</sup>

18. NATOA asserts that the Commission should permit franchising authorities to fashion a wide range of remedies for noncompliance with customer service requirements.<sup>39</sup> Specific local governments vary in their comments concerning the actual penalties that should be applied in cases of non-compliance. Some local governments, such as the Cities of Miami Beach, Florida, and Dallas, Texas, request that the Commission establish (or grandfather in existing franchise agreements provisions for) specific monetary penalties (in the form of refunds, rebates or credits) for violations of customer service standards. The New York State Commission on Cable Television ("NYSCCT") suggests that, where enforcement powers are limited or unavailable to franchise authorities under existing franchise agreements, this Commission should make its standards immediately applicable to cable operators (subject to franchise authority notification to the cable operator) for purposes of making compliance thereunder a legitimate subject of review at franchise renewal or to allow franchise authorities to compel performance through local actions for specific performance or injunctive relief.<sup>40</sup>

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<sup>35</sup> Time Warner comments at 14-15.

<sup>36</sup> See, e.g., Continental comments at 47, n.31; TCI comments at 21, n.27.

<sup>37</sup> See, e.g., NCTA comments at 31-32; TCI comments at 21.

<sup>38</sup> TCI comments at 18-22.

<sup>39</sup> NATOA comments at 27. NATOA also requests that franchise authorities be permitted to obtain, in addition to aggregate performance data, specific information regarding individual subscriber complaints to the cable operator. It believes that such information will assist local franchise authorities to monitor compliance and arrive at effective enforcement mechanisms. NATOA reply comments at 12, n. 8.

<sup>40</sup> NYSCCT comments at 6-7. See also MFA comments at 12. In response, TCI states that NYSCCT's plan for the imposition of the FCC standards for some purposes but not others is unworkable, highlights the difficulty of enforcing standards for which no prescribed penalties exist for noncompliance, and confuses the issue of local adoption of the Commission's standards with amending existing cable franchises. TCI

19. Discussion. Section 632(a) of the Communications Act, as amended by Section 8 of the 1992 Cable Act, preserves the current ability of a franchise authority to enforce the customer service requirements of a cable operator.<sup>41</sup> Specifically, Section 632(a) expressly provides that "a franchise authority may establish and enforce" customer service requirements and construction schedules. Section 632(b), in delineating the FCC's involvement in establishing customer service standards, provides this Commission with no specific enforcement role. As a result, it does not appear that Congress intended for the Commission to bear the responsibility of enforcing the new FCC standards. In addition, we believe that as a practical matter, customer service requirements can be enforced most efficiently and appropriately on a local level where such enforcement historically has occurred. Accordingly, we conclude that the customer service standards we adopt today should be enforced by local franchise authorities.<sup>42</sup> However, consistent with our overall obligation to effectuate the reforms mandated by the 1992 Cable Act, we retain the authority to address, as necessary, systemic abuses that undermine the statutory objectives.

20. As a general principle, specific customer service requirement enforcement mechanisms and processes are to be determined by the franchise authorities, and will be applicable to cable operators upon notification.<sup>43</sup> To the extent that existing franchise agreements may prohibit franchise authority enforcement of customer service standards, such provisions are preempted by the Federal statute. A franchise authority that chooses to enforce the FCC standards may do so pursuant to the rules and principles adopted herein, and may unilaterally modify the franchise agreement to the extent necessary or desirable to implement local enforcement of the FCC's customer service requirements. Of course, franchise authorities may also enforce service requirements either pursuant to the terms of an existing franchise agreement which provide for effective enforcement; with

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reply comments at 5-6.

<sup>41</sup> We decline to subject unfranchised video program distributors to the Federal customer service standards as suggested by Viacom. Neither the statute nor its history supports FCC or local adoption or enforcement of such standards with regard to unfranchised program distributors, and we believe that such an approach is unnecessary and impractical. Of course, nothing herein prevents the enforcement of local consumer protection or customer service laws applicable to such service providers.

<sup>42</sup> We emphasize that the Commission's customer service standards do not necessarily supersede customer service requirements in existing franchise agreements. See note 20, supra. Of course, should the franchise authority elect to enforce the FCC standards, customer service requirements not meeting these standards contained in the franchise agreement will be superseded.

<sup>43</sup> See discussion at para. 26, infra.

the consent of the affected cable operator; pursuant to applicable State or municipal consumer protection or customer service law or regulation; or pursuant to the franchising process.

21. We also believe that it is unnecessary for this Commission to establish specific customer service reporting requirements or refund or penalty guidelines applicable to all cable operators nationwide. In this regard, some local governments and cable operators appear to be satisfied with various customer service enforcement mechanisms already in place. Moreover, there is nothing in the record to indicate that State or municipal consumer protection or customer service laws or regulations are inappropriate to enforce customer service requirements; in fact, such laws are often the traditional method of local enforcement actions. In contrast, adoption of Federal enforcement standards could preempt local enforcement mechanisms and hamper effective local enforcement of customer service requirements. Similarly, and based on the record before us, we do not believe that it is appropriate for the Commission to establish specific, universally applicable remedies or penalties for operators that do not comply with their customer service obligations. Local governments should be free to avail themselves of reasonable remedies to assure compliance and fairness to all parties. Such remedies could include, for example, ordering credits or refunds to the system's subscribers.<sup>44</sup> Local governments are likewise free to pursue nonmonetary forms of relief to assure customer satisfaction including, but not limited to, local actions to compel specific performance or performance evaluation at franchise renewal. We would expect that overall system-wide compliance based on aggregate performance will be a fundamental concern to franchise authorities, but we do not believe it is appropriate to preclude local resolution of individual subscriber complaints that cannot be resolved between the cable operator and its customer.<sup>45</sup>

#### D. Effective Date of Customer Service Standards

22. In the Notice, we tentatively concluded that it is unlikely that the Congress intended for no changes in customer service requirements to occur prior to the expiration of each

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<sup>44</sup> See House Report at 105.

<sup>45</sup> In this regard, we believe that it is unnecessary to require cable operators to disclose to franchise authorities specific information regarding individual subscriber complaints as requested by NATOA. If a complaint to a cable operator cannot be resolved to a customer's satisfaction, a franchise authority is not precluded from considering individual cases brought to its attention, and may seek that information necessary to resolve such matters.

current franchise term.<sup>46</sup> Accordingly, comment was sought on the impact of the statutory provisions on existing franchise agreements, particularly as to whether Section 632(a) permits franchising authorities to modify existing franchise agreements prior to renewal. Interested parties were also asked to comment on when, pursuant to the Cable Act of 1992, local governments may impose new service standards and the extent to which customer service provisions in existing franchise agreements can or should be grandfathered or might be superseded by the Federal service standards.<sup>47</sup>

23. As noted previously, most local governments maintain that the FCC-established standards are self-executing and, once effective, are immediately applicable to cable operators until a franchise authority takes independent action imposing and enforcing different or additional customer service requirements.<sup>48</sup> These commenters argue generally that Section 632(a), as amended by the Cable Act of 1992, changes the former Section 632(a) (*i.e.*, as amended by the Cable Act of 1984) by removing any limitation as to when customer service requirements may be added to the terms of a franchise.<sup>49</sup> They suggest that such a plain reading of the statute comports with Congressional objectives to immediately protect consumers, particularly in areas where consumer standards are not currently in place.<sup>50</sup>

24. In contrast, most cable operators contend that any new customer service standards to be adopted by local authorities may only be imposed after the expiration of existing franchise agreements.<sup>51</sup> These commenters suggest that the imposition of

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<sup>46</sup> 7 FCC Rcd at 8643, para. 7.

<sup>47</sup> *Id.*

<sup>48</sup> *See*, para. 7, *supra*.

<sup>49</sup> Section 632(a) of the Communications Act of 1934, as amended by the Cable Act of 1984, Public Law No. 98-549, 98 Stat 2780 (1984), provided in pertinent part:

(a) A franchising authority may require, as part of a franchise (including a franchise renewal), . . . provisions for enforcement of -  
(1) customer service requirements of the cable operator; and  
(2) construction schedules and other construction-related requirements of the cable operator.

(emphasis added). As amended by the Cable Act of 1992, Section 632(a) omits the language emphasized above.

<sup>50</sup> *See*, *e.g.*, NYSCCT comments at 6-7; Western comments at 13-14.

<sup>51</sup> These commenters suggest that with most cable franchises coming up for renewal within the next few years, there is no reason to impose new standards or disturb existing agreements immediately. *See*, *e.g.*, NCTA comments at 21, 27-28; Coalition comments at 7-8. Local governments, by and large, challenge this assertion,



new customer service requirements in mid-term undermines franchise renewal expectancies and could violate the Contracts Clause of the United States Constitution.<sup>52</sup> They similarly argue that the Cable Act does not confer independent power on franchise authorities to adopt new enforcement mechanisms other than those already in place in existing franchise agreements.<sup>53</sup>

25. Commenting parties suggest that the Commission may wish to establish a transition or phase-in period to allow cable systems to make the necessary adjustments to achieve compliance with new customer service requirements. NATOA suggests that any phase-in should be determined for specific standards by a franchise authority on a waiver basis, based upon a showing of need by cable operators and until compliance can be achieved (but not to exceed one year).<sup>54</sup> The Cities of Miami Beach and St. Louis suggest that a three-month phase-in might be appropriate.<sup>55</sup> Consortium also supports the concept of a phase-in, but does not offer a specific time frame.<sup>56</sup> Comcast suggests that 12 months should be afforded to cable operators to comply with the Federal

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maintaining that such a position is unsupported by specific statutory language and is contrary to the clear findings of Congress that existing levels of service are inadequate and that cable consumers deserve immediate relief. See NATOA reply comments at 9; C-TEC Communities reply comments at 10.

<sup>52</sup> See, e.g., NCTA comments at 27, n.3; CRB comments at 17, n.3. These parties maintain generally that the Contracts Clause (Article I, Section 10) of the Constitution prohibits any state "law impairing the obligations of contracts" and would thus prohibit a local government from unilaterally imposing new customer service requirements on a franchised cable operator. These commenters further argue that due to a franchise authority's asserted role as a contractor, as opposed to a regulator, imposition of new customer service requirements in mid-term requires the consent of the cable operator.

<sup>53</sup> In this regard, these commenters maintain that although the 1992 Act differs from the 1984 Act in the sense that the former does not contain language limiting the imposition of customer service standards to franchise renewals, the deletion of the "renewal language" does not mean that franchise authorities may amend existing franchise agreements to impose standards exceeding the federal standards. See, e.g., Comcast comments at 5, n.5; Continental reply comments at 6 (removal of this language evidences Congress' intent to permit franchise authorities to adopt and impose only the Commission's customer service standards prior to renewal). The City of Kalamazoo ("Kalamazoo"), maintains that franchising authorities should remain free to implement additional customer service requirements pursuant to general State or municipal policing powers conferred in franchise agreements. Kalamazoo comments at 4-6.

<sup>54</sup> NATOA comments at 32. Various municipalities also recognize the need or desirability of a phase-in period, but generally endorse a shorter time-frame. See, e.g., City of Miami Beach comments at 3 (no more than three months following the effective date of customer service requirements); St. Louis reply comments at 1 (120 days after the standards become effective).

<sup>55</sup> Miami Beach, Florida, comments at 3, n.6; St. Louis, reply comments at 4.

<sup>56</sup> Consortium comments at 6.

standards, with waivers available upon an appropriate showing (e.g., when additional time is warranted for new personnel or equipment and a waiver is consistent with the interests of subscribers).<sup>57</sup> TCI and Time Warner suggest that the statutory language and legislative history of the Cable Act of 1992 are ambiguous regarding implementation, and that it would appear that new standards could be implemented only at a franchise grant, modification, transfer, or renewal. Nevertheless, they assert that they would have no objections to immediate implementation (upon franchise authority action) of the FCC-established customer service standards.<sup>58</sup>

26. Discussion. Our decision that local franchise authorities will enforce the self-executing Federal standards we adopt today raises the issue of when those standards should become effective. Virtually all commenters agree that the customer service requirements should be phased-in under a reasonable timetable; they disagree, however, about what the timetable should be. We note that a significant number of cable systems maintain that they have already successfully implemented service requirements modeled after the NCTA voluntary standards.<sup>59</sup> Although the standards adopted in this Order are more stringent than the NCTA voluntary guidelines, we find that the average cable system should be able to come into compliance with our standards within three months without significant industry disruption. Accordingly, the FCC standards will go into effect on July 1, 1993. However, before a local government begins enforcement of the FCC-established standards, we believe that it is appropriate to require the franchise authority to notify affected cable systems in writing of its enforcement plans.<sup>60</sup> This notification must be accomplished by certified

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<sup>57</sup> Comcast comments at 4.

<sup>58</sup> TCI comments at 16-18; Time Warner comments at 10-11. However, TCI qualifies its position by stating that if the Federal standards adopted by the FCC track the NCTA guidelines, a six-month phase-in period (after notice to the cable operator) should be afforded. If the Commission varies from the NCTA standards, TCI urges that the time given to cable operators to implement such standards "should be significantly longer."

<sup>59</sup> See, e.g., NCTA comments at 29; TCI comments at 2; Time Warner comments at 2; Comcast comments at 4, n.3.

<sup>60</sup> We do not believe that our decision today raises the Constitutional question regarding contracts suggested by some commenters. See note 52, supra. There is nothing in the record before us to indicate that the rules we adopt herein will result in a substantial impairment of contractual relationships between local governments and cable operators, or that those relationships in any event outweigh the significant and legitimate public purposes underlying both the statute and our implementing rules. See, e.g., Energy Reserves Group v. Kansas Power and Light, 459 U.S. 400, 410-13 (1983) (State law created no substantial impairment to the contractual relationship and any impairment was justified by significant and legitimate governmental interests).

mail, and must give affected cable operators 90 days notice of the intended enforcement.<sup>61</sup>

### III. Customer Service Standards

#### A. Background

27. In the Notice, we sought comment on the specific customer service standards to be adopted in this proceeding. We noted that Congress suggested that the NCTA standards, which address each of the areas required by statute to be addressed in the Federal standards, could be used as a "benchmark" by the Commission in establishing such standards.<sup>62</sup> Accordingly, the Notice requested comment on whether the Commission should use the NCTA standards, or some modification thereof, as a benchmark for setting the national standards or whether it should consider some other standards.<sup>63</sup> The NCTA standards were set out in the Notice,<sup>64</sup> and we asked a series of questions regarding each area covered by the standards and further requested parties to provide definitions for the meaning of the terms included in those standards. Finally, we also invited comment on other approaches we could take, such as a series of different standards depending on the characteristics of the cable system (e.g., age, size or location of the system) or a range of service minimums.<sup>65</sup>

#### B. Federal Customer Service Standards

28. All of the commenters agree upon the need to develop standards that are clearly stated and flexible enough to account for the variety of needs, circumstances and economics of cable systems throughout the country.<sup>66</sup> While there is no consensus

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<sup>61</sup> Franchise authorities may serve enforcement notifications before the FCC standards become effective, but they may not begin enforcing those standards until after they become effective and the cable operator has had the full 90 days' notice of the authority's intent to enforce them.

<sup>62</sup> See House Report at 105. However, the legislative history also discussed several perceived shortcomings with the NCTA standards. See Id. at 34-37 (questions whether NCTA guidelines are stringent enough); Senate Report at 20-22 (notes concerns about the value of the NCTA standards).

<sup>63</sup> 7 FCC Rcd at 8643, para. 10.

<sup>64</sup> The NCTA standards, in their entirety, were printed in the Notice. See 7 FCC Rcd at 8644-45, para. 11-15.

<sup>65</sup> 7 FCC Rcd at 8645, para. 19.

<sup>66</sup> See, e.g., CATA comments at 3; CRB comments at 2 (the NCTA standards, if applied with the intended flexibility, could provide a workable national benchmark); MFA comments at 16 (a single benchmark will best service the purpose of the Cable Act of 1992); NYSCCT comments at 9 (it is "virtually impossible to craft a set of

regarding the appropriate substance and scope of the customer service standards the Commission should adopt, the suggested standards generally fall into two categories. First, most cable operators and the two cable industry trade associations endorse the NCTA standards with some modification,<sup>67</sup> usually proposing the inclusion of definitions for key terms. Second, NATOA proposes a specific set of standards which are more stringent and specific than NCTA's and which address a greater number of issues.<sup>68</sup> Most local governments endorse the NATOA proposal.

29. The cable operators endorsing the NCTA standards argue that they offer a workable, national benchmark which can be tailored to meet local community needs and to account for the economics of particular cable systems.<sup>69</sup> TCI suggests that the lack of consensus as to the proper scope and content of the customer service standards is a persuasive reason for the Commission to adopt the "well-known and widely implemented NCTA standards."<sup>70</sup> According to NCTA, the cable industry has spent "tens of millions of dollars" to meet its standards. It further states the total number of cable systems which applied for certification for adopting the NCTA voluntary standards increased from 76 in 1990 to 1,985 in 1992.<sup>71</sup> These commenters argue that since the widespread implementation of the NCTA standards, customer service has improved and complaints have declined. Time Warner specifically notes that the legislative history's criticism of the industry's consumer service record reflects

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standards which would service the needs of each and every community throughout the nation", but the NCTA standards are "reasonable minimal requirements"). Cf., USSBA comments at 6 (believes that more than one federal service standard benchmark must be developed for customer service standards.)

<sup>67</sup> The NCTA standards do not contain any definitions for terms used in the standards, but NCTA, and some cable operators, propose definitions for key terms in their comments. See NCTA comments at 7.

<sup>68</sup> The NATOA proposed standards include provisions dealing with 18 different subject areas, including telephone and walk-in customer service requirements, handling and scheduling of service calls, damaged equipment, billing and billing disputes, franchisee employee identification and customer surveys and research. See NATOA reply comments, Attachment A.

<sup>69</sup> See, e.g., CRB comments at 7; Comcast comments at 3.

<sup>70</sup> TCI comments at 1-2.

<sup>71</sup> NCTA comments at 7-8. For example, Time Warner states that its cable systems, which serve 6.9 million subscribers, and "many cable operators throughout the industry" have already implemented the NCTA standards "at significant cost, over the past two years." Time Warner comments at 2. CATA states that it believes the majority of its membership and NCTA's meet or exceed the NCTA standards. CATA comments at 2.

problems that existed before implementation of the NCTA standards.<sup>72</sup>

30. Most local governments, on the other hand, argue that while the NCTA standards may provide a useful starting point, they are neither stringent nor specific enough.<sup>73</sup> Many local governments cite the requirement in the NCTA standards that bills be "clear, concise and understandable" as a prime example of the vagueness of those standards.<sup>74</sup> They also argue that, by including language regarding customer service in the Cable Act of 1992, Congress clearly indicated that it wanted standards that are stricter than NCTA's.<sup>75</sup>

31. Consequently, the local governments propose adoption of different standards. While many submitted copies of their customer service regulations, they realize that these requirements are too specific for adoption as a Federal standard.<sup>76</sup> Thus, local governments instead generally endorse NATOA's recommended standards.<sup>77</sup> The NATOA proposal was derived from a variety of provisions of existing franchise agreements negotiated between cable operators and franchising authorities for both large and small cable systems.<sup>78</sup> It differs from the NCTA standards in three major respects: 1) the standards are more specific; 2) they are generally, although not always, more stringent, and 3) they cover several areas not addressed by the NCTA standards.<sup>79</sup> For instance, in addition to addressing the

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<sup>72</sup> Time Warner comments at 7.

<sup>73</sup> See, e.g., Dallas comments at 5 (while NCTA standards are acceptable, they are incomplete and inflexible when applied to all local franchising authorities); Fairfax County reply comments at 11 (more stringent, as well as additional standards are needed to satisfy Congress' directive to establish effective minimum customer service requirements); Kalamazoo comments at 2; Metropolitan Area Communications Commission reply comments at 2-3; City of Vancouver and Clark County reply comments at 3.

<sup>74</sup> See, e.g., Attorneys General comments at 9; NYSCCT comments at 9; St. Louis reply comments at 13.

<sup>75</sup> See, e.g., Miami Beach comments at 4; C-TEC Communities reply comments at 11.

<sup>76</sup> See, e.g., Attorneys General comments, Attachment A; City of Dallas comments, Exhibit A; NYSCCT comments, Attachment; City of Kalamazoo comments, Attachment.

<sup>77</sup> See, e.g., reply comments of Anne Arundel County; Cape Coral; Cincinnati; Fort Lauderdale; Hillsborough County; Miami; New Orleans; Portland; Rainier Cable Commission; San Antonio; and Tallahassee.

<sup>78</sup> NATOA reply comments at 15.

<sup>79</sup> NATOA proposes over 40 standards, compared to NCTA which addresses 12. See NATOA proposed standards, NATOA reply comments, Attachment A; NCTA standards, 7 FCC Rcd 8644-45, paras. 11-15.

areas required by the statute in greater detail than the NCTA standards do, NATOA also recommends adoption of national standards governing notification to subscribers for routine service interruptions; damaged equipment; mechanisms regarding resolution of service-related disputes; voluntary and involuntary disconnections; distributions of promotional material; employee identification; and customer surveys and research.<sup>80</sup>

32. NCTA notes, however, that while endorsing the NATOA standards, the local governments do not address the costs such standards would impose on the cable operator. Furthermore, it argues, a rigid set of nationwide standards would not work for many systems and would, in fact, undermine the efficient delivery of cable service in many communities.<sup>81</sup> Time Warner agrees, arguing that the local governments "offer no persuasive rationale for believing that such standards would improve customer service" and that "imposing a new set of standards will simply increase costs without resulting in measurable increases in actual consumer satisfaction."<sup>82</sup> Comcast also notes that the customer service provisions must be interpreted in a manner that is consistent with the mandate of the Cable Act that rates be reasonable and that costs for additional services be reflected in a cable system's rate base.<sup>83</sup>

33. Continental Cablevision suggests an alternative approach to standards generally, proposing that the Commission adopt "performance standards" (standards which prescribe the results that are to be achieved and which measure the effects of a company's service on its customers) rather than content standards (standards which dictate what is to be done, such as the NCTA standards). Continental states that performance standards offer several advantages: they tend to be easier to implement, are more consumer oriented, and are cheaper to measure (and thus generally less costly). It believes that content standards, on the other hand, may actually reduce the quality of customer service because technical compliance with the standards can be achieved without achieving a beneficial impact on customers<sup>84</sup>. Further, Continental notes that the cost of

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<sup>80</sup> See NATOA reply comments at 29-30.

<sup>81</sup> NCTA reply comments at 2.

<sup>82</sup> Time Warner comments at 4-8 and reply comments at 2. See also TCI reply comments at 4 (tougher standards are not necessarily better standards).

<sup>83</sup> Comcast comments at 2.

<sup>84</sup> For example, Continental states that customer service representatives may spend less time with each customer so that more calls can be answered in order to reduce the busy rate. While the percentage of calls that result in a busy signal would thus be lowered, the goal of improved service may be undercut if customers get

implementing content standards as well as measuring compliance is higher and is money that could otherwise be spent improving customer service.<sup>85</sup>

34. Discussion. After carefully reviewing the record, we are adopting a single set of Federal customer service standards which deal with the specific areas set out in Section 632(b). As suggested by the legislative history of that section, we used the NCTA standards as a starting point for the development of our Federal standards. However, we have modified and added to those standards to take into consideration several of the problems with the NCTA standards raised by the commenters. Most notably, we have included definitions of key terms in the standards to help ensure a more uniform understanding of their requirements, and have strengthened other standards to ensure more satisfactory customer service.

35. We note that, although all commenters urge us to adopt flexible customer service standards, very few discussed our proposal to adopt permissible ranges for each specific standard.<sup>86</sup> Those commenters that did address this issue argued that the use of ranges would not be practical.<sup>87</sup> Accordingly, we will adopt a single set of Federal standards that will be applicable to all cable systems nationwide. We believe that these standards can be readily met by the vast majority of cable systems.

36. We stress, moreover, that we have built some flexibility into each standard in order to accommodate the different operating conditions faced by different cable systems.<sup>88</sup> Thus, for example, rather than defining "normal business hours" as a specific number of hours per week, we have developed a definition that relies on community standards to ascertain the appropriate number of hours a cable operator should

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less of the customer service representatives' attention when they call, which could reduce their chance of getting their problem resolved. Continental comments at 11.

<sup>85</sup> Id. at 8-15.

<sup>86</sup> See Notice, 7 FCC Rcd at 8645, para. 19.

<sup>87</sup> See Coalition comments at 7 (large burden on small systems to track various local standards); Fairfax County reply comments at 18 (inconsistent application of standards).

<sup>88</sup> In addition, as discussed earlier, our rules allow for small cable systems, those with 1,000 or fewer subscribers, to apply to the Commission for a waiver if compliance with one or more of our rules is too onerous for that system. See para. 11 and note 18, supra.

be open for business.<sup>89</sup> Similarly, we will not require cable operators to meet all standards 100 percent of the time; rather, where appropriate, we have included a "safety net" in the compliance requirements to afford greater flexibility to cable operators. For instance, the 90 percent compliance requirement for telephone answer time will permit operators to fall short of the Federal standard, even under normal operating conditions, 10 percent of the time. We believe that these provisions will grant cable operators sufficient leeway to satisfy the Federal standards despite the different operating conditions they may face.

37. While we believe that many of the points made by Continental may be valid, we do not believe it is practical to adopt standards that are performance based. As noted by TCI, imposing a subjective rather than objective level of customer satisfaction would be very difficult to measure and would result in fluctuating standards and varying levels of customer satisfaction.<sup>90</sup> Accordingly, the Federal standards we adopt today will be content based.

#### 1. Definitions

38. In the Notice we asked for comment on whether the Commission should provide definitions for key terms in the Federal standards, which terms needed definitions, and how those terms should be defined.<sup>91</sup> The NCTA standards do not define any terms. Almost all commenters, including NCTA, agree that to the extent the NCTA standards serve as a benchmark for Federal standards, certain terms need to be defined in order to be clearly understood and uniformly applied. The most commonly cited terms were "normal business hours," "normal operating conditions" and "service interruptions." Since we will also be using these terms in the standards we adopt today, we agree that they should be specifically defined in order to prevent confusion.

- a) **Normal Business Hours:** For purposes of the Commission's customer service standards, the term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours. Normal business hours are pertinent in regard to requirements for the telephone availability of trained company

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<sup>89</sup> See para. 43, infra.

<sup>90</sup> TCI reply comments at 3-4.

<sup>91</sup> 7 FCC Rod at 8645, para. 20.



representatives, walk-up service and bill paying, installations and service calls, and repair of service interruptions.

39. Most cable operators and the cable industry trade associations propose that "normal business hours" be defined as general office hours, i.e., 40 hours per week, Monday through Friday.<sup>92</sup> Under the NCTA standards, supplemental hours, either in the evening or on weekends, should be negotiated between the cable operator and the franchising authority. The local governments, in contrast, argue that cable is a service industry and thus cable operators should have hours beyond general office hours. They assert that in order to be convenient for subscribers who work during general office hours, cable operators must provide service more than 40 hours per week and that some evening and weekend hours must be included. NATOA's proposed standards would require a cable operator's office to be staffed to respond to the public not less than 50 hours per week, with at least 9 hours per weekday and 5 hours per Saturday.<sup>93</sup>

40. We agree with the local governments that cable is a service industry and thus it is not proper to limit public access to the cable operator's staff to 9-5, Monday through Friday. However, we also do not believe that it is reasonable to require the cable operator to staff its office for prescribed days or for prescribed hours beyond the normal work week. Our definition strikes a balance between these two interests by requiring the office to be open at least one evening or weekend day to accommodate people who work 9-5, Monday through Friday. Of course, the cable operator may agree to have its office open additional evening and weekend hours, as the needs of the community warrant. Additionally, the burden imposed by many of the standards may vary by the size of the system. For instance, the volume of telephone calls an operator receives, as well as installation and maintenance obligations, can be expected to vary in some direct relationship to the number of its subscribers. Further, the cable operator may use an agent such as a bank or other businesses to receive bill payments from cable customers during and outside of normal business hours. Such an arrangement, however, will not relieve the operator of its obligation to have its own bill payment locations open at least during normal business hours.

41. We believe that in most cases, service businesses in the community, including cable operators, will be open for business at least 40 hours a week. However, we also recognize that in some communities the normal work week may not be 40 hours

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<sup>92</sup> See, e.g., TCI comments at 10.

<sup>93</sup> See NATOA proposed standard 2, NATOA reply comments, Attachment A.